
IMPROVING MANAGEMENT OF DEFENDER SERVICES PROGRAM RESOURCES

Through its defender services program, the Judiciary ensures that the right to counsel guaranteed by the Sixth Amendment to the Constitution, the Criminal Justice Act (CJA), and other congressional mandates is enforced on behalf of those who cannot afford to retain counsel and other necessary defense services. The Judiciary has no control over the number of individuals for whom services will be provided. Congressional action, Department of Justice policies, and U.S. attorney practices determine the number of program clients. Within these external constraints, the Judiciary takes action wherever possible to contain costs. The following is a summary of several initiatives.

Recommendations on Cost and Quality of Defense Representation in Federal Death Penalty Cases

In early fiscal year 1999, courts and counsel were notified about and encouraged to comply with a series of recommendations for containing costs and improving the quality of federal death penalty representation. The recommendations, which were approved by the Judicial Conference in September 1998, are contained in the report entitled *Federal Death Penalty Cases: Recommendations Concerning the Cost and Quality of Defense Representation*. The report was the product of an extensive year-long study that addressed the cost, availability, and quality of defense representation in these cases and recommended steps to keep expenditures within reasonable limits. The report concluded that “overall, the average cost of representation is reasonable in relation to the obligations imposed on defense counsel and the costs of prosecuting such cases.”

Highlights of the report’s recommendations regarding representation in federal death penalty cases include the following:

- Courts should not appoint more than two defense lawyers to represent a defendant unless required by exceptional circumstances, but should author-

ize limited use of additional lawyers when this would contain costs or is needed to meet time limits.

- Courts should appoint experienced death penalty litigators since they generally are more cost-effective than less experienced counsel. Further, hourly rates of compensation should remain high enough to attract qualified attorneys.
- The federal defender program should consider establishing salaried investigator positions for federal defender organizations to coordinate preparation of the penalty phase at a lower cost than outside experts paid at hourly rates.
- Courts should require lawyers to develop case budgets, both before and after the prosecution decides whether to seek the death penalty, to ensure the most effective and economical use of resources.
- Courts should consider making early decisions on whether to sever non-capital defendants from defendants facing capital charges in multi-defendant federal death penalty cases.
- Courts should consider using case management techniques to diminish document production and distribution costs and to reduce duplication of effort among defense counsel.

In addition, the Judiciary will encourage the Department of Justice to streamline its review of federal death penalty cases so that cases with an unlikely chance of a death penalty request will be reviewed more quickly. Early decisions not to seek the death penalty reduce the length of time cases must be treated as federal death penalty cases where the defendant is entitled to two lawyers at higher hourly rates. Thus, expedited case review would reduce significantly defense costs.

January 1998 Cost-Savings Recommendations

The Judiciary continues pursuing implementation of 39 recommendations included in the January 1998 congressionally-mandated *Report on Costs and Recommendations for the Control of Costs of the Defender Services Program*. Conducted by the consulting firm Coopers and Lybrand, L.L.P, the study concluded that

Defender Services program costs are in line with what one would expect from the increase in the number of representations, the increasing proportion of capital and capital habeas representations, and the costs incurred in a handful of extraordinarily expensive representations each year.

The report's recommendations, which offer ways to contain costs and improve program results, were developed with the assistance of various internal Judiciary groups and external criminal justice experts. The Judiciary is working with courts, Judiciary policy makers, federal defenders, and the Department of Justice on implementation and will provide a progress report to Congress by March 1, 1999.

Comparative Study of Federal Capital Habeas Corpus Case Costs

At congressional request, the Judiciary will submit a report by March 1, 1999, on representation costs in federal capital habeas corpus cases. The report will examine the reasons for the disparity in costs among districts and circuits. It will include a comprehensive statistical analysis of private "panel" attorney costs in federal capital habeas corpus cases by district, state, and circuit.

Congress requested this study as a follow-up to the January 1998 report on defender services costs, which showed that the Ninth Circuit, particularly the California districts, accounted for over 60 to 76 percent of capital habeas representation costs from 1995 to 1997, but only 48 to 63 percent of the representations.

Performance Measures for the Defender Services Program

The Judiciary is in the process of developing performance measures for the defender services program. The measures should help the Judiciary improve management of the program budget, direct resources to areas where they are needed most, and better demonstrate the effectiveness of the program to Congress and the public.

As the first step in what is expected to be an extended process, in 1997 and 1998 the Judiciary conducted surveys of U.S. district court chief judges regarding the defender services program. Survey questions focused on the timeliness and quality

of services. Of the 89 judges responding, 99 percent said that counsel was secured for eligible defendants in what they considered to be a reasonable amount of time. With respect to the quality of legal representation provided by federal public defenders, 96 percent of the judges rated the services as very good or better. Private panel attorneys appointed under the program, however, were not rated as highly by the judges, with 65 percent of the judges ranking the quality of services provided by them as falling below that furnished by the federal public defenders.

These results indicate that, despite high praise for the program, there is a need for improvement, particularly with respect to the panel attorneys. The Judiciary is taking steps to address this need. For example, the Judiciary's fiscal year 2000 appropriations request includes funds to implement a 1986 congressionally authorized compensation rate of \$75 per hour for panel attorneys to attract experienced and well-qualified counsel.

In the future, the Judiciary plans to expand on the above and gather additional performance information to assist with managing the program.

IMPROVING THE EFFICIENCY AND EFFECTIVENESS OF THE PROBATION AND PRETRIAL SERVICES SYSTEM

The Third Branch has an essential law enforcement role in addition to its fundamental mission of providing for the fair resolution of matters brought to federal court. It is responsible for supervising offenders serving sentences in the community, individuals released from prison on supervised release, and persons charged with offenses released to the community pending adjudication. Further, it conducts investigations of convicted offenders and persons charged with criminal offenses, and prepares reports to assist with sentencing and with decisions related to pretrial release and detention. Several initiatives to improve the effectiveness of the probation and pretrial services system are underway.